

**Amendment in the Nature of a Substitute to
The Mortgage Reform and Anti-Predatory Lending Act of 2007 (H.R. 3915)**

TITLE I—MORTGAGE ORIGINATION

Subtitle A – Licensing System for Residential Mortgage Loan Originators

Sec. 101. Purposes and methods for establishing a mortgage licensing system and registry.

Sets forth objectives for a Nationwide Mortgage Licensing System and Registry (NMLSR) for the residential mortgage industry to be established by the States through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

Sec. 102. Definitions.

Establishes definitions for various terms for this subtitle, including: “loan originator,” “loan processor or underwriter,” “nationwide mortgage licensing system and registry,” “registered loan originator,” “residential mortgage loan,” “State-licensed loan originator,” and “unique identifier.”

Sec. 103. License or registration required.

Provides that an individual may not engage in the business of a loan originator without obtaining and maintaining registration as a registered loan originator or a license and registration as a State-licensed loan originator, and obtaining a unique identifier. Makes clarifications regarding administrative and clerical workers, as well as loan processors and underwriters.

Sec. 104. State license and registration application and issuance.

The applicant to any State for licensing and registration as a State-licensed loan originator has the obligation to furnish certain information to the NMLSR, including fingerprints and personal history and experience. Minimum standards for license issuance includes no revocation of loan originator license in the past 5 years, no felony conviction in the past 7 years, demonstration of financial responsibility, completing pre-licensing education reviewed, approved, and published by the NMLSR (at least 20 hours), and passing a written test developed and administered by the NMLSR (at least 75% correct answers out of minimum 100 questions).

Sec. 105. Standards for State license renewal.

Minimum standards for license renewal include the State-licensed loan originator continuing to meet the minimum standards for license issuance and satisfying continuing education requirements.

Sec. 106. System of registration administration by Federal banking agencies.

Within one year of the enactment, the Federal banking agencies will jointly develop and maintain a system for registering the employees of banks and their subsidiaries as registered loan originators with the NMLSR, and will furnish or cause to be furnished to the NMLSR certain information including fingerprints and personal history and experience. The Federal banking

agencies, through the FFIEC, will coordinate with the NMLSR to establish a unique identifier for all registered loan originators.

Sec. 107. Secretary of housing and urban development backup authority to establish a loan originator licensing system.

If a State does not have in place a system that meets the minimum standards set forth in this section for State-licensed loan originators or does not participate in the NMLSR within 1 year of enactment (2 years for those States with legislatures that meet biennially) or any time thereafter, a HUD backup licensing system will be established where HUD will maintain and administer a system of licensing and registering loan originators operating in such a State as State-licensed loan originators. HUD may grant an extension up to 6 months to those States making a good faith effort to meet the minimum standards. The HUD license can only be used in the State for which it was granted.

Sec. 108. Backup authority to establish a nationwide mortgage licensing and registry system.

If HUD determines that the NMLSR is failing to meet the requirements of the legislation, HUD will develop and maintain system for registration and regulation of mortgage originators.

Sec. 109. Fees.

The Federal banking agencies, HUD, and the NMLSR may charge reasonable fees to cover costs for maintaining and providing access to the NMLSR, to the extent such fees are not charged to the consumers for accessing the information.

Sec. 110. Background checks of loan originators.

The Attorney General will provide access to all criminal history information to States for regulating State-licensed loan originators to the extent criminal background checks are required under State law for licensing loan originators. CSBS or a wholly owned subsidiary may be used as channeling agent of States for requesting and distributing information between the Department of Justice and the State agencies.

Sec. 111. Confidentiality of information.

Except as otherwise provided, requirements under Federal or State privacy or confidentiality laws, and any privilege arising under Federal or State law, will continue to apply after information has been disclosed to the NMLSR or the HUD system. Such information may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without loss of privilege or loss of confidentiality protections provided by such laws.

Sec. 112. Liability provisions.

HUD or any State official or agency, or organization serving as the administrator of the NMLSR or the HUD system, or any officer or employee thereof, will not be subject to any civil action for monetary damages for good-faith action or omission while acting within the scope of office or employment.

Sec. 113. HUD Enforcement

If HUD sets up a backup licensing system pursuant to section 107, then HUD will have regulatory authority over the licensees of such backup licensing system similar to banking regulators (e.g., summons authority, examination authority, and other enforcement authority including the ability to issue cease and desist orders and to assess civil money penalties).

Subtitle B – Residential Mortgage Loan Origination Standards

Amends the Truth in Lending Act to provide the following:

Sec. 121. Definitions.

Establishes definitions for various terms, including: “Federal banking agencies” (Federal Reserve, OCC, OTS, FDIC, and NCUA), “mortgage originator,” “qualified nationwide registration regime,” “qualifying state licensing law,” “residential mortgage loan,” “securitization vehicle,” and “securitizer.”

Sec. 122. Residential mortgage loan origination.

All mortgage originators (including mortgage brokers and depository institutions that originate mortgages) will be subject to a federal duty of care that requires (1) licensing and registration under State or Federal law (including subtitle A of title I of this legislation), (2) diligently working to present the consumer with a range of residential mortgage loan products for which the consumer likely qualifies and are appropriate to the consumer’s existing circumstances (i.e., consumer has reasonable ability to repay and receives net tangible benefit, and loan does not have predatory characteristics), (3) making full, complete, and timely disclosures to consumers, (4) certifying to creditors compliance with mortgage origination requirements under this section, and (5) including in all loan documents the unique identifier of the mortgage originator. Mortgage originators are not required, however, to present residential mortgage loan products of creditors that do not accept consumer referrals or applications from the mortgage originator, and creditors are not required to offer products that the creditor does not offer to the general public. This subsection expressly does not create an agency or fiduciary relationship, but mortgage originators are free to become an agent or a fiduciary if they so desire. Federal banking agencies, in consultation with HUD and FTC, will jointly prescribe regulations to further define the federal duty of care. The Federal banking agencies will prescribe regulations requiring depository institutions to establish procedures for monitoring compliance with the requirements of this section and the registration procedures of section 106 of this legislation.

Sec. 123. Anti-steering.

For loans that are not qualified mortgages (i.e., not prime loans), no mortgage originator can receive, and no person can pay, any incentive compensation (including yield spread premium) that is based on or varies with the terms of such loans (other than amount of principal). The Federal banking agencies, in consultation with HUD and FTC, will jointly prescribe regulations to prohibit (1) mortgage originators from steering any consumer to a residential mortgage loan that the consumer lacks a reasonable ability to repay, that does not provide net tangible benefit, or that has predatory characteristics, (2) mortgage originators from steering any consumer from a qualified mortgage (prime loan) to a loan that is not a qualified mortgage, and (3) abusive or unfair lending practices that promote disparities among consumers of equal credit

worthiness but of different race, ethnicity or age. However, nothing in this subsection should be construed as limiting the ability of a mortgage originator to sell residential mortgage loans to subsequent purchasers, restricting a consumer's ability to finance origination fees if they were disclosed to the consumer and do not vary with the consumer's decision to finance such fees, or prohibiting incentive payments to a mortgage originator based on the number of loans originated.

Sec. 124. Liability.

A cause of action will exist under section 130(a) and 130(b) of TILA for a mortgage originator's failure to comply with this section. The maximum liability of a mortgage originator for violation of this section will not exceed three times the total amount of mortgage originator fees, plus the consumer's costs including reasonable attorney's fees.

Sec. 125. Regulations.

Regulations under this title will be promulgated within 12 months of the enactment of this Act, and take effect no later than 18 months after the enactment.

TITLE II—MINIMUM STANDARDS FOR MORTGAGES

Amends the Truth in Lending Act to provide the following:

Sec. 201. Ability to repay.

No creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan (including all applicable taxes, insurance, and assessments). Federal banking agencies, in consultation with FTC, will jointly prescribe regulations regarding this provision. A determination of reasonable ability to repay will be based on the consumer's credit history, current income, expected income the consumer is reasonably assured or receiving, current obligations, debt-to-income ratio, employment status, and other financial resources other than the consumer's equity in the real property securing the loan.

Sec. 202. Net tangible benefit for refinancing of residential mortgage loans.

No creditor may extend credit for refinancing unless the creditor reasonably and in good faith determines, at the time the loan is consummated and on the basis of information known by or obtained in good faith by the creditor, that the refinanced loan will provide a net tangible benefit to the consumer. The refinanced loan will not be considered to provide net tangible benefit if the costs of the loan, including points, fees, and other charges, exceed the amount of newly advanced principal without any corresponding changes in the terms of the refinanced loan that are advantageous to the consumer. The Federal banking agencies will jointly prescribe regulations further defining the term "net tangible benefit."

Sec. 203. Safe harbor and rebuttable presumption.

A presumption can be made that the minimum standards (reasonable ability to repay and net tangible benefit) are met for "qualified mortgages" and "qualified safe harbor mortgages." Qualified mortgages (prime loans) are presumed to meet the minimum standards and this presumption may not be rebutted. For qualified safe harbor loans, the presumption may be

rebutted only against creditors. Qualified mortgages are prime loans with APRs that are not equal to or greater than 3% over comparable Treasuries or 175 basis points over the Federal Reserve H.15 rate for first lien loans, and 5% over comparable Treasuries or 375 basis points over the Federal Reserve H.15 rate for non-first lien loans. Qualified safe harbor mortgages are loans with (1) documented consumer income, (2) underwriting process based on fully indexed rate (and taking into account taxes, insurance, and assessments), (3) no negative amortization, (4) other requirements that may be established by regulation, AND (5) one of the following: (i) fixed payment for at least 5 years, (ii) for variable-rate loans, the APR varies based on a margin that is less than 3% over a single interest rate index, OR (iii) loan does not cause the consumer's total monthly debts, including amounts under the loan, to exceed a percentage (to be established by regulation) of monthly gross income.

Federal banking agencies may jointly prescribe regulations to revise, add to, or subtract from these safeharbor provisions and to carry out the purposes of this subsection.

Sec. 204. Liability.

For a loan that violates the minimum standards for reasonable ability to repay or net tangible benefits as set forth by regulation, a consumer has a cause of action against a creditor for rescission of the loan and the consumer's costs. A creditor will not be liable for such rescission if the creditor provides a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer. In addition, for a loan that violates the minimum standards, a consumer has an individual cause of action against any assignee or securitizer for rescission of the loan and the consumer's costs. An assignee or securitizer will not be liable for a loan that violates the minimum standards if the assignee or securitizer: (1) provides a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer, OR (2) (a) has a policy against buying mortgage loans that are not qualified mortgages or qualified safe harbor mortgages and, in accordance with regulations that the Federal banking agencies and SEC will jointly prescribe, exercises reasonable due diligence to adhere to such policy, including through sampling, AND (b) has obtained representations and warranties from the seller or assignor of the loan regarding not selling or assigning loans that violate the minimum standards and takes reasonable steps to obtain the benefit of such representations or warranties. If any creditor, assignee or securitizer and a consumer fail to agree on a cure, or if the consumer fails to accept a cure, the creditor, assignee, or securitizer may provide the cure and the consumer may challenge the adequacy of the cure within 6 months of the cure. If a creditor, assignee, or securitizer cannot provide rescission, they can provide the financial equivalent. Liability of a creditor, assignee, or securitizer will apply for 3 years after consummation of the loan or, for a variable rate loan or a negative amortization loan, the earlier of 1 year after the loan resets or 6 years after consummation of the loan. Liability will not apply to pools of loans, including the securitization vehicle, or investors in pools of loans.

Sec. 205. Defense to foreclosure.

When the holder (including the securitization vehicle) of a residential mortgage loan or anyone acting on such holder's behalf initiates a judicial or non-judicial foreclosure, (1) a consumer who has a rescission right under this section may assert such right as a defense to foreclosure or counterclaim to foreclosure against the holder to forestall such foreclosure, or (2) if the foreclosure proceeding begins after the rescission right expires, the consumer may seek

actual damages plus costs against the creditor, assignee, or securitizer. Such holder, anyone acting on behalf of such holder, or any other applicable third party may sell or assign a residential mortgage loan to any creditor, assignee, or a securitizer, or their designee, to effect a rescission or a cure.

Sec. 206. Additional standards and requirements.

Prepayment Penalties: Prohibits prepayment penalties on loans that are not qualified mortgages as defined in section 203 (i.e., loans that are not “prime” loans), and requires that all remaining prepayment penalties expire three months before a loan resets.

Renters in Foreclosure: In case of foreclosure, any successor in interest will take over the property subject to any bona fide lease made to bona fide tenant entered into before the notice of foreclosure. Bona fide tenants without a lease will receive at least a 90-day notice before being required to vacate. A lease or tenancy is bona fide if it is the result of arms-length transaction or if the rent is not substantially less than fair market rent.

Other Provisions: Prohibits single-premium credit insurance and mandatory arbitration on mortgage loans. Requires securitizers to reserve the right in any document or contract establishing pools of loans to obtain access to such loans and to provide for and obtain a remedy under this title. Requires the servicer of a residential mortgage loan to provide annual notice (or whenever there is change in ownership of the loan) to the consumer of the identity of the creditor or assignee who should be contacted concerning the consumer’s rights with respect to the loan. Prohibits negative amortization loans to a first-time borrower unless the creditor makes certain disclosures to the borrower and the borrower has received homeownership counseling from a HUD-certified organization or counselor.

Sec. 207. Rule of construction.

Except as otherwise expressly provided, no provisions of the new sections 129A and 129B added by this Act will be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of TILA or any other provision of Federal or State law.

Sec. 208. Effect on state laws.

The provisions of section 204 will supersede any State law that provides additional remedies against any assignee, securitizer, or securitization vehicle, and the remedies in section 204 will constitute the sole remedies against any assignee, securitizer, or securitization vehicle for a violation of section 201 or 202 (reasonable ability to repay and net tangible benefit requirements) or any other State law arising out of or relating to the specific subject matter of section 201 and 202. No provision of this section will be construed as limiting the application of any State law against a creditor, or the application of any State law against any assignee, securitizer, or securitization vehicle, that does not arise out of or relate to, or provide additional remedies in connection with the specific subject matter of section 201 or 202.

Sec. 209. Regulations.

Regulations under this title will be promulgated within 12 months of the enactment of

this Act, and take effect no later than 18 months after the enactment.

Sec. 210. Amendments to civil liability provisions.

Doubles the amount of certain statutory civil liability penalties currently applicable under TILA. Extends the statute of limitations from one year to three years.

TITLE III—HIGH-COST MORTGAGES

Amends the Truth in Lending Act to provide the following:

Sec. 301. Definitions Relating to High-Cost Mortgages.

Expands the scope of HOEPA to also cover purchase money loans and open-end loans. Codifies the existing Federal Reserve standard for the APR trigger which is set at 8% above comparable Treasury securities for first mortgages and Treasuries plus 10% for subordinate mortgages. Lowers the points and fees trigger (total points and fees payable in connection with the loan transaction) from 8% to 5% for most loans. The points and fees trigger stays at 8% for loans secured by a dwelling that is personal property. Establishes a third trigger for loans with prepayment penalties that exceed 2% or 36 months duration. Expands the definition of points and fees to include all compensation paid directly or indirectly by a consumer or creditor to a mortgage broker from any source (including table-funded transactions), certain insurance premiums, prepayment penalty charges under the loan, and prepayment penalties actually charged in a refinance by the original creditor or the original creditor's affiliate. Excludes certain bona fide discount points and prepayment penalties (up to 2 points for near-market interest rate loans) from the determination of the amount of points and fees that trigger HOEPA protections.

Sec. 302. Amendments to Existing Requirements for Certain Mortgages.

Prohibits prepayment penalties on HOEPA loans with principal amounts below the FHA loan limit for a given geographical area. Prohibits balloon payments on high-cost mortgages unless the payment schedule is adjusted to the seasonal or irregular income of the consumer. Provides additional high-cost mortgage "ability to repay" protections. Creditors are allowed to consider a number of factors including current and expected income, current obligations, and employment status (rebuttable presumption of ability to repay if, at the time the high-cost mortgage is consummated, the consumer's total monthly debts do not exceed 50% of monthly gross income).

Sec. 303. Additional Requirement for Certain Mortgages.

Prohibits creditors from (1) encouraging that borrowers default on an existing loan when refinancing such existing loan with a high-cost mortgage, (2) charging multiple late fees for a high-cost mortgage on the same delinquent payment and caps any given late fee at 4%, (3) unilaterally accelerating a high-cost mortgage, (4) directly or indirectly financing points and fees for high-cost mortgages (the restriction applies to prepayment penalties if the creditor or an affiliate is the noteholder of the note being refinanced), (5) structuring a high-cost mortgage to evade HOEPA protections, (6) modifying or deferring fees unless they can be proven beneficial to the consumer, (7) providing a high-cost mortgage to a consumer unless the creditor has received a certification that the borrower received pre-loan counseling from a HUD-approved

entity, and (8) knowingly or intentionally engaging in flipping in connection with a high-cost mortgage. Requires that creditors and servicers disclose and provide free access to payoff amounts.

Sec. 304. Amendment to provision governing correction of errors.

Permits creditors to correct non-bona fide errors within 30 days of the loan closing and prior to the institution of any action. Permits creditors to correct bona fide errors within 60 days of the creditors' discovery or receipt of notification and prior to the institution of any action. A creditor may correct an error by making the loan satisfy the applicable requirements of TILA (including requirements of this Act) or, in the case of a high-cost mortgage, changing the terms of the loan so the loan is no longer a high-cost mortgage.

Sec. 305. Regulations.

Requires the Federal Reserve Board to implement regulations under this title within six months of enactment.

TITLE IV—OFFICE OF HOUSING COUNSELING

Sec. 401. Short title.

This title may be cited as the “Expand and Preserve Home Ownership Through Counseling Act.”

Amends the Department of Housing and Urban Development Act to provide the following:

Sec. 402. Establishment of Office of Housing Counseling.

Establishes the Office of Housing Counseling under HUD, headed by a Director appointed by the Secretary. The Director will be responsible for all homeownership and rental housing counseling programs for HUD, and will establish, coordinate and administer all regulations, requirements, standards, and performance measures under the programs that relate to housing counseling, homeownership counseling, mortgage-related counseling, and rental housing counseling. The Director will establish rules for (1) counseling procedures, (2) carrying out all other related functions, including establishing a toll-free number, (3) information booklets, (4) carrying out the certification of counseling service providers, (5) providing assistance in the provision of counseling services, (6) carrying out functions the Secretary deems appropriate with regard to unscrupulous lending practices in the home mortgage business, (7) support the advisory committee created under this act, (8) collaborate with community-based organizations, and (9) provide for building capacity to provide housing counseling services in areas that lack sufficient services. The Secretary will appoint an advisory committee composed of no more than 12 individuals representing all aspects of the mortgage and real estate industry, including consumers. Members appointed by the Secretary will serve 3-year terms, except that initially, four will be appointed for 1-year terms and four will be appointed for 2-year terms. The Secretary may reappoint members at his discretion. Members will not be paid, but may receive travel expenses. The advisory committee has no role in reviewing or awarding housing counseling grants. Counseling services will cover the entire process of homeownership, including refinancing and foreclosure.

Sec. 403. Counseling procedures.

The Secretary will establish, coordinate, and monitor all HUD counseling procedures, including requirements, standards, and performance measures that relate to homeownership and rental housing. “Homeownership counseling” is defined as counseling related to homeownership and residential mortgage loans. “Rental housing counseling” is defined as counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referral for renters and prospective renters to entities providing counseling. The Secretary will establish standards for materials and forms used by counseling service providers, and provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The mortgage software system will take into account (1) the consumer’s financial situation and the cost of maintaining a home, including insurance, taxes, and utilities, (2) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan, and (3) any other factors to assist the consumer in making choices during the loan application process. The certified software programs will be used to supplement, not replace, housing counseling, and the software programs initially will be used only in connection with the assistance of certified housing counselors. The Secretary will develop, implement, and conduct national public service multimedia campaigns to make potentially vulnerable consumers aware of the existence of homeownership counseling. Appropriations not to exceed \$3 million are authorized for national public service multimedia campaigns for fiscal years 2008, 2009, and 2010. The Secretary will provide advice and technical assistance to States, units of local government, and non-profit organizations regarding provisions of counseling services.

Sec. 404. Grants for housing counseling assistance.

Provides that the Secretary will make financial assistance available for homeownership or rental counseling to States, units of local government, and non-profit organizations. The Secretary will establish standards and guidelines for assistance eligibility. Appropriations of \$45 million are authorized for each of fiscal years 2008 through 2011 for this program.

Sec. 405. Requirements to use HUD-certified counselors under HUD programs.

Requires any homeownership counseling or rental housing counseling administered by HUD to be provided solely by organizations or counselors certified by the Secretary.

Sec. 406. Study of defaults and foreclosures.

Not later than 12 months after the enactment of this legislation, the Secretary will submit to Congress a preliminary report on the root causes of default and foreclosure of home loans and the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures. No later than 24 months after the enactment of this legislation, the Secretary will submit a final report regarding the results of the study, which will include any recommended legislation relating to the study and recommendations for best practices and for a process to identify populations that need counseling the most.

Sec. 407. Definitions for counseling-related programs.

Provides definitions of “nonprofit organization,” “State,” and “unit of general local

government.”

Sec. 408. Updating and simplification of mortgage information booklet.

Directs the Secretary to prepare a booklet at least once every 5 years to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. Identifies specific topics in the information booklet that the Secretary must include in plain and understandable language, including explanation of (1) costs incident to real estate settlement or federally related mortgage loan (including at a minimum balloon payments, prepayment penalties, and trade-off between closing costs and the interest rate over the life of the loan), (2) the uniform settlement statement, (3) unfair lending practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement, (4) questions that the consumer should ask about a loan, (5) the right of rescission, (6) variable rate mortgages, (7) home equity line of credit, (8) the availability and the value of homeownership counseling services, (9) escrow accounts, (10) available choices for providers of incidental services; (11) the buyer’s responsibilities, liabilities, and obligations; (12) appraisals, and (13) HUD brochure regarding loan fraud.